

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

221731

STB FINANCE DOCKET NO. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL., - CONTROL -
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**COMMENTS AND REQUEST FOR CONDITIONS
OF
MUSCATINE POWER AND WATER**

Jeffrey O. Moreno
Eric N. Heyer
THOMPSON HINE LLP
1920 N Street, N.W
Suite 800
Washington, D.C. 20036
(202) 331-8800

*Attorneys for
Muscatine Power and Water*

Dated: March 4, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL., - CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**COMMENTS AND REQUEST FOR CONDITIONS
OF
MUSCATINE POWER AND WATER**

Muscatine Power and Water ("Muscatine"), pursuant to Decision No. 4 of the Surface Transportation Board ("STB" or "Board"), served in this docket on December 27, 2007, hereby submits these "Comments and Request for Conditions" on the proposed acquisition of the Dakota, Minnesota & Eastern Railroad Corporation ("DME") by the Canadian Pacific Railway Company ("CP"). Muscatine filed a timely Notice of Intent to Participate as a Party of Record on January 23, 2008.

Statement of Interest

Muscatine is a customer-driven municipal utility, headquartered in Muscatine, Iowa. It is the largest municipal electricity utility in Iowa in terms of sales and generation, providing electricity to more than 10,000 customers. Verified Statement of Brad Spratt ("Spratt V.S.") at ¶ 2 Muscatine owns and operates four coal-fired electric generating facilities with a combined nameplate capacity of 293.55 MW *Id.* at ¶ 3. All of those facilities are located at the Muscatine Electric Generating Station ("Muscatine Station") in Muscatine, Iowa. *Id.*

The Muscatine Station burns approximately 1.1 million tons of coal annually, which it receives by rail from mines in the Powder River Basin of Wyoming ("PRB"). *Id.* at ¶ 4. The

Iowa, Chicago & Eastern Railroad Corporation ("ICE"), which was purchased by DME in 2003, is the only rail carrier that serves the Muscatine Station. *Id*

Currently, the BNSF Railway Company ("BNSF") originates this coal in the PRB and interchanges it with ICE at Ottumwa, Iowa, for delivery to the Muscatine Station. *Id* at ¶ 5. However, Muscatine has the option of originating its PRB coal on either BNSF or the Union Pacific Railroad ("UP"). *Id* Four interchange points link ICE to the UP and BNSF: Kansas City, Missouri with both UP and BNSF; Ottumwa, Iowa with BNSF; Clinton, Iowa with UP; and Owatonna, Minnesota with UP. *Id* at ¶ 6. Of these four points, Ottumwa is the most efficient interchange with BNSF and Clinton is the most efficient interchange with UP. *Id*.

Historical Background

In late 2002, DME filed a petition for Board approval of its proposed acquisition of ICE.¹ Muscatine filed Comments and Request for Conditions in that proceeding, which are attached hereto as Exhibit 1. Specifically, Muscatine asked the Board to require the combined DME/ICE to maintain the four existing interchange points with the UP and BNSF described above; to provide separately challengeable common carrier rates, upon request, from these four interchanges to the Muscatine Station; and to waive all defenses to the "contract exception" after completion of DME's proposed new rail construction into the PRB.

Following that filing, Muscatine and DME/ICE reached a settlement that addressed Muscatine's stated concerns. That agreement is attached as Exhibit 2. In that agreement, DME/ICE agreed not to take any action to close any of the four ICE interchanges with the UP and BNSF identified above, and to offer, upon request, segment contract rates or proportional common carrier rates via those interchanges to the Muscatine Station. As a result of this

¹ See STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. –Control– Iowa, Chicago & Eastern Railroad Corporation*, Decision No. 2 (slip opinion served September 26, 2002)

agreement, Muscatine withdrew its Comments and Request for Conditions. In early 2003, shortly after Muscatine and DME/ICE entered into their agreement, the Board gave final approval for the proposed acquisition of ICE by DME.²

Since DME's acquisition of ICE, the combined DME/ICE has continued to carry Muscatine's coal traffic from the Ottumwa, Iowa interchange point to the Muscatine Station. Spratt V.S. at ¶ 7 Rail transportation from the PRB to the Ottumwa interchange is provided in accordance with a proportional rate contract between Muscatine and BNSF entered into in 2007, while carriage from Ottumwa to the Muscatine Station continues under a proportional rate contract between DME/ICE and Muscatine that expires in 2012. *Id.* at ¶¶ 5, 7.

Request for Conditions

As a general matter, Muscatine does not oppose the proposed acquisition of DME/ICE by CP. However, Muscatine requests certain conditions to preserve its current competitive options post-merger. Specifically, Muscatine seeks to preserve the four existing points where DME/ICE interchanges traffic with UP and BNSF so long as they remain commercially reasonable, as well as all regulatory rate remedies that currently are available to Muscatine. These are the same conditions that Muscatine requested, and believed it had obtained, when DME acquired ICE.

Recently, however, in discussions between Muscatine, CP, and DME/ICE, it has become apparent that the parties disagree as to the effect of the prior agreement on DME/ICE's obligations after 2012. Muscatine's concern is that, if the proposed acquisition is approved, CP may exercise unfettered discretion to close any or all of the four interchange points after 2012,

² See STB Finance Docket No. 34178, *Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. –Control– Iowa, Chicago & Eastern Railroad Corporation*, Decision No. 7 (slip opinion served January 31, 2003)

and that upon completion of the approved build-in to the PRB,³ CP may refuse to quote a segment or proportional rate from those interchanges to the Muscatine Station. These facts raise the very real specter of the elimination of Muscatine's competitive rail options after 2012. Upon completion of DME/ICE's proposed extension of its rail line into the PRB with the additional capital resources that would be made available through its acquisition by CP, Muscatine would have three competitive rail options at PRB origins if the interchanges remain open—the UP, BNSF, and the new CP/DME/ICE line. However, CP will have strong incentives to favor this new single-line route from the PRB to Muscatine Station over a two-carrier joint line haul with BNSF or UP. Thus, after 2012, if the proposed acquisition is approved, CP/DME/ICE is unlikely to offer a new proportional rate contract at all for the bottleneck segment of any route to the Muscatine Station that originates on the UP or BNSF, much less a competitive bottleneck segment rate. CP may also have anti-competitive incentives to close some or all of the four interchange points with the UP and BNSF.

In the "Bottleneck Decisions,"⁴ the Board held, as a general matter, that a shipper is entitled to challenge the reasonableness of rates only on a through basis (i.e., from origin to destination). *Bottleneck I* at *27-30. In reaching that conclusion, the Board denied relief to shippers who sought to challenge only the reasonableness of the rate over the bottleneck portion of a route, while relying upon competition to establish a reasonable rate over the non-bottleneck segments. The Board, however, also recognized a "contract exception" to this policy.⁵ The Board determined that, where a bottleneck carrier cannot serve both the origin and destination,

³ STB Finance Docket No. 33407, *Dakota, Minnesota & Eastern R R Corp Construction into the Powder River Basin* (slip opinion served January 30, 2002).

⁴ *Central Power & Light Co. v Union Pac R R Co*, Nos. 41242 et al, 1996 STB LEXIS 358 (served Dec. 31, 1996) ("*Bottleneck I*"), clarified 1997 STB LEXIS 91 (served May 1, 1997) ("*Bottleneck II*"), *aff'd in part*, *MidAmerican Energy Co v STB*, 169 F.3d 1099 (8th Cir 1999).

⁵ The "contract exception" was affirmed in *Union Pac R R Co v STB*, 202 F.3d 337 (D.C. Cir. 2000).

and where a shipper secures a separately negotiated contract for the non-bottleneck segment of the route, the shipper may separately challenge a common carriage bottleneck rate. *Id.* at *30-31. Moreover, in *Bottleneck II* at *20-21, the Board stated that, if necessary, it would compel the bottleneck carrier to establish a separately challengeable rate.

In order for Muscatine to have recourse to the contract exception, both the PRB origin and Muscatine Station cannot be served by the same carrier. However, if the proposed merger is approved and CP's additional capital resources permit the combined CP/DME/ICE to complete the build-in to the PRB, Muscatine's regulatory protection will be lost because the combined CP/DME/ICE will serve both the origin and destination. Although Muscatine believes that it protected itself from this consequence when DME acquired ICE, the uncertainty created by CP's acquisition of DME/ICE may adversely affect competition at the Muscatine Station, since it could deprive Muscatine of an existing regulatory remedy.

Additionally, without any protection of the interchanges for Muscatine, CP may not face any constraints to closing the four interchange points for anti-competitive purposes after 2012. The Board has noted the potential anti-competitive results that may occur where, as a result of a merger, a railroad is permitted to close gateways and foreclose other connecting railroads from participating in movements to the purchased railroad's service area. *See Canadian Nat'l Ry Co and Grand Trunk Corp –Control– Duluth, Missabe, and Iron Range Ry Co., Bessemer and Lake Erie R R Co and the Pittsburgh & Conneaut Dock Co.*, Finance Docket No. 34424, 2004 STB LEXIS 230, at *21-22, 29-30 (served April 9, 2004). In at least one such instance, the Board has required the merging railroads to keep such gateways open on commercially reasonable terms and to waive all defenses to the "contract exception" as a condition for approval of the merger. *See id.* at *29-30, 52-53; *see also Canadian Nat'l Ry. Co and Grand Trunk*

Corp., and WC Merger Sub., Inc –Control– Wisconsin Central Transportation Corp.,

Wisconsin Central Ltd , Fox Valley & Western Ltd , Sault Ste Marie Bridge Co , and Wisconsin

*Chicago Link Ltd , Finance Docket No. 34000, 2001 STB LEXIS 711, at *14-15, 31, 61 (served on September 7, 2001) (imposing bottleneck-waiver pledge as condition of approval of merger).*

These also are appropriate remedies for Muscatine.

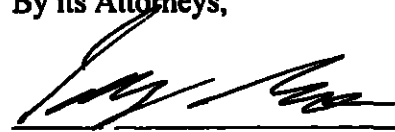
There is some uncertainty as to whether Muscatine's agreement with DME/ICE will be binding upon CP post-merger. Therefore, Muscatine asks the Board to remove that uncertainty by imposing conditions upon its approval of the proposed transaction requiring that:

1. the combined CP/DME/ICE maintain the existing DME/ICE interchange points for Muscatine's unit train coal traffic at Kansas City, Missouri with UP and BNSF; at Ottumwa, Iowa with BNSF; at Clinton, Iowa with UP; and at Owatonna, Minnesota with UP;
2. if CP/DME/ICE desires to close any of the above interchange points for Muscatine's unit train coal traffic, CP/DME/ICE must either (a) obtain Muscatine's consent or (b) petition the Board to permit CP/DME/ICE to close the interchange because such closure (i) will not cause competitive harm to Muscatine and (ii) is justified by economic and operating efficiencies, provided, however, that CP/DME/ICE shall always maintain at least one of the above interchanges each with UP and BNSF;
3. upon the request of Muscatine, CP/DME/ICE shall offer segment contract rates and/or quote proportional common carrier rates applicable to Muscatine's unit train coal movements, via all published interchanges capable of handling Muscatine unit train coal traffic, including but not limited to all of the above interchanges so long as they remain open; and
4. CP/DME/ICE waive all defenses to the "contract exception" based upon its service to both a PRB coal origin and the Muscatine Station.

Respectfully submitted,

Muscatine Power and Water

By its Attorneys,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', is written over a horizontal line.

Jeffrey O. Moreno

Eric N. Heyer

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March 4, 2008

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EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB FINANCE DOCKET NO. 34178

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.**

—CONTROL—

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

**COMMENTS AND REQUEST FOR CONDITIONS
OF
MUSCATINE POWER AND WATER COMPANY**

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Suite 301 Batterson Building
319 East Second Street
Muscatine, Iowa 52761
(563) 264-8926**

***Attorneys for
Muscatine Power and Water Company***

Dated: November 22, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34178



**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND CEDAR AMERICAN RAIL HOLDINGS, INC.**

—CONTROL—

IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

**COMMENTS AND REQUEST FOR CONDITIONS
OF
MUSCATINE POWER AND WATER COMPANY**

Muscatine Power and Water Company ("Muscatine"), pursuant to Decision No. 5 of the Surface Transportation Board ("STB" or "Board"), served in this docket on November 15, 2002, hereby submits these "Comments and Request for Conditions" on the proposed acquisition of the Iowa, Chicago & Eastern Railroad Corporation ("ICE") by the Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. ("DME"). Concurrently, Muscatine also is filing a "Petition for Leave to Intervene" in compliance with Decision No. 5.

Statement of Interest

Muscatine is a customer-driven, municipal utility, headquartered in Muscatine, Iowa. It is the largest municipal electric utility in Iowa in terms of sales and generation, providing electricity to 10,839 customers. Muscatine owns and operates four coal fired electric generating facilities with a combined capacity of 293.55 MW. Three of those facilities are located at the Muscatine Electric Generating Station ("Muscatine Station") in Muscatine, Iowa.

The Muscatine Station burns approximately 1.1 million tons of coal annually. Currently, Muscatine acquires this coal from the Buckskin Mine in the Powder River Basin of Wyoming

("PRB"). The coal moves by rail on The Burlington Northern and Santa Fe Railroad ("BNSF") to Ottumwa, Iowa, where BNSF interchanges the coal with ICE for delivery to the Muscatine Station. This rail transportation is provided in accordance with two separate proportional rate contracts between Muscatine and each rail carrier. Upon expiration of its coal supply and transportation contracts, Muscatine has the option to originate coal at any PRB mine on BNSF or the Union Pacific Railroad ("UP"), or the DME once its proposed build-in to the PRB has been completed. Muscatine also has alternative rail routings via ICE interchanges at Kansas City, Missouri with UP and BNSF; at Ottumwa, Iowa with BNSF; at Clinton, Iowa with UP; and at Owatonna, Minnesota with UP

Request for Conditions

As a general matter, Muscatine supports the proposed acquisition of ICE by DME. However, Muscatine requests certain conditions to preserve its current competitive options post-merger. More specifically, Muscatine seeks to preserve the four existing points where ICE interchanges traffic with UP and BNSF and all regulatory rate remedies that currently are available to Muscatine.

Currently, the Muscatine Station is rail-served only by ICE, which is a neutral bottleneck carrier for coal originating in the PRB. Muscatine has competitive rail options at PRB origins from either UP or BNSF, which both interchange with ICE at several locations. In addition, DME has obtained authority from the Board to extend its rail line into the PRB to become a third competitive rail option for the origination of PRB coal.¹ The proposed acquisition of ICE by DME, however, would destroy ICE's status as a neutral bottleneck carrier for coal originating in the PRB, once DME initiates rail service from the PRB.

The loss of ICE as a neutral bottleneck carrier will be anti-competitive because the combined DME/ICE will have strong incentives to favor their new single-line route from the PRB to Muscatine Station over a two-carrier joint line haul with BNSF or UP. As a

¹ STB Finance Docket No. 33407, *Dakota, Minnesota & Eastern R.R. Corp. Construction into the Powder River Basin* (served Jan 30, 2002).

consequence, DME/ICE is unlikely to offer a proportional rate contract at all for the bottleneck segment of the route, much less a competitive bottleneck segment rate, similar to the proportional rate contract pursuant to which the coal currently moves from the Ottumwa, Iowa interchange with BNSF to the Muscatine Station.

In the “Bottleneck Decisions,”² the STB held, as a general matter, that a shipper is entitled to challenge the reasonableness of rates only on a through basis (i.e., from origin to destination). *Bottleneck I* at *27-30. In reaching that conclusion, the STB denied relief to shippers who sought to challenge only the reasonableness of the rate over the bottleneck portion of a route, while relying upon competition to establish a reasonable rate over the non-bottleneck segments. The STB, however, also recognized a “contract exception” to this policy.³ It determined that, where a bottleneck carrier cannot serve both the origin and destination, and where a shipper secures a separately negotiated contract for the non-bottleneck segment of the route, the shipper may separately challenge a common carriage bottleneck rate. *Id.* at *30-31. Moreover, in *Bottleneck II* at *20.21, the Board stated that, if necessary, it would compel the bottleneck carrier to establish a separately challengeable rate.

Although, currently, Muscatine could require ICE to publish a common carrier proportional bottleneck rate and challenge an unreasonable rate before the Board, that regulatory protection will be lost as a consequence of the merger. That is because, in order for Muscatine to benefit from the contract exception, both the PRB origin and the Muscatine Station cannot be served by the same carrier. That requirement is satisfied today because ICE does not serve the PRB. Post-merger, however, the combined DME/ICE will serve both the origin and destination once DME completes its build-in to the PRB. Thus, the DME’s acquisition of ICE will adversely affect competition at the Muscatine Station, since it would deprive Muscatine of an existing regulatory remedy.

² *Central Power & Light Co. v Union Pac R R. Co*, Nos. 41242 et al., 1996 STB LEXIS 358 (served Dec. 31, 1996) (“*Bottleneck I*”), clarified 1997 STB LEXIS 91 (served May 1, 1997) (“*Bottleneck II*”), *aff’d in part*, *MidAmerican Energy Co v STB*, 169 F. 3d 1099 (8th Cir. 1999)

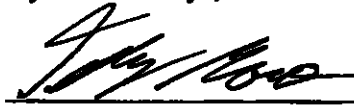
³ The “contract exception” was affirmed in *Union Pac R R Co v STB* 202 F. 3d 337 (D.C. Cir. 2000).

Muscatine, therefore, asks the Board to condition its approval of the proposed transaction by requiring the combined DME/ICE (1) to maintain existing ICE interchange points at Kansas City, Missouri with UP and BNSF; at Ottumwa, Iowa with BNSF; at Clinton, Iowa with UP; and at Owatonna, Minnesota with UP; (2) to provide separately challengeable common carrier rates, upon request, from these four interchanges to the Muscatine Station; and (3) to waive all defenses to the "contract exception" based upon its service to both a PRB coal origin and the Muscatine Station.

Respectfully submitted,

Muscatine Power and Water Company

By its Attorneys,



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Muscatine, Iowa 52761
((563) 264-8926

November 22, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 22nd day of November, 2002, a copy of the foregoing "Comments and Request for Conditions" of Muscatine Power and Water Company by first-class mail on all parties of record in this proceeding.



Aimee L. DePew

EXHIBIT 2



CONFIDENTIAL

IOWA, CHICAGO, & EASTERN RAILROAD

**P.O. Box 1280-57101
140 N. Phillips-57104
Sioux Falls, SD
(605) 782-1200 Phone
(605) 782-1299 Fax**

December 16, 2002

**Ms. Connie R. Thede
Manager, Purchasing & Stores
Muscatine Power & Water
3205 Cedar Street
Muscatine, IA 52761-2204**


Dear Connie:

Iowa Chicago & Eastern Railroad Corporation (IC&E) appreciates Muscatine Power & Water ("MPW") as a valued customer. In order to provide reasonable assurance that the proposed common control case of IC&E and DM&E will not create material concerns to you, IC&E and DM&E hereby commit as follows with respect to rail gateways:

- (a) IC&E/DM&E shall not take any action to close, or assist any other rail carrier in closing, the Interchanges between IC&E/DM&E and other rail carriers that are identified in the Contract between MPW and IC&E, dated January 1, 1998, (herein the "MPW-IMRL-IC&E Contract)". Upon expiration of the MPW-IMRL-IC&E Contract, however, IC&E/DM&E shall move such traffic on terms and conditions that are normal and customary for a terminating carrier that does not have single-line access to PRB coal originations. If there is a dispute as to whether such terms and conditions are normal and customary, the burden shall be on IC&E/DM&E to prove that they are.**
- (b) Upon the request of MPW, IC&E/DM&E shall offer segment contract rates and/or quote proportional common carrier rates applicable to MPW's unit train coal movements destined to the Muscatine Station, via all published interchanges capable of handling MPW unit coal train traffic. Rates offered or quoted under this subsection (b) would not take effect before the termination or expiration of the MPW-IMRL-IC&E Contract, unless new and not covered under said contract.**
- (c) At a request of MPW, any time prior to the expiration of the current MPW-IMRL-IC&E, IC&E/DM&E shall enter into good faith negotiations to develop a new rail transportation agreement for the movement of unit coal trains to the Muscatine Station.**

If this agreement addresses your concerns, please indicate below and return a copy to us for our files.

Sincerely,


Robert Brownell
President, IC&E

And


Kevin V. Schieffer
President and CEO, DM&E

cc: Mr. John Waltman
Mr. John K. Brooks

Accepted by:

MUSCATINE POWER AND WATER

Name:



Title:

Jay D. Logel
General Manager

Date:

December 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL., - CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**VERIFIED STATEMENT OF BRAD SPRATT
MUSCATINE POWER AND WATER**

1. My name is Brad Spratt. I am the acting strategic sourcing manager for Muscatine Power and Water ("Muscatine"). I am submitting this Verified Statement in support of Muscatine's Comments and Request for Conditions with regard to the proposed purchase of the Dakota, Minnesota & Eastern Railroad Corporation ("DME") by the Canadian Pacific Railway Company ("CP").

2. Muscatine is a customer-driven municipal utility headquartered in Muscatine, Iowa. Muscatine is the largest municipal electricity utility in Iowa in terms of sales and generation and provides electricity to more than 10,000 customers.

3. Muscatine owns and operates four coal-fired electric generating facilities. These four facilities have a combined nameplate capacity of 293.55 MW. All of these facilities are located at the Muscatine Electric Generating Station ("Muscatine Station") in Muscatine, Iowa.

4. The Muscatine Station burns approximately 1.1 million tons of coal annually, which it receives by rail from mines in the Powder River Basin of Wyoming ("PRB"). The Iowa, Chicago & Eastern Railroad Corporation ("ICE"), which was purchased by DME in 2003, is the only rail carrier that serves the Muscatine Station.

5. The coal that the Muscatine Station consumes is shipped from the PRB origination point by the BNSF Railway Company ("BNSF"), which then interchanges with ICE at Ottumwa, Iowa for delivery to the Muscatine Station. Currently, BNSF's service from the PRB to the Ottumwa interchange is provided pursuant to a proportional rate contract that Muscatine and BNSF entered into in 2007. However, in addition to the BNSF, Muscatine also has the option of originating its PRB coal on the Union Pacific Railroad ("UP").

6. There are four interchange points that link ICE to the UP and BNSF: Kansas City, Missouri, with both the UP and BNSF; Ottumwa, Iowa with BNSF; Clinton, Iowa with UP; and Ottumwa, Minnesota with UP. Of these four points, Ottumwa is the most efficient interchange with BNSF and Clinton is the most efficient interchange with UP.

7. In 2003, ICE was acquired by DME. Shortly before the DME/ICE merger was approved by the Board, in exchange for Muscatine's withdrawal of its Comments and Request for Conditions in the merger proceeding, Muscatine and DME/ICE entered into a letter agreement. In the letter agreement, DME/ICE agreed not to take any action to close any of the four ICE interchanges with the UP and BNSF and agreed to offer, upon request, segment contract rates or proportional common carrier rates via those interchanges to the Muscatine Station. Since the merger, the combined DME/ICE has continued to carry Muscatine's coal traffic from the Ottumwa interchange point to the Muscatine Station under a separate proportional rate contract that expires in 2012.

8. MPW has been unable to confirm with ICE/DME and CP the impact of CP's acquisition of DME/ICE on the letter agreement and Muscatine's access to the current interchange points upon the expiration of the current DME/ICE proportional rate contract with Muscatine in 2012..

VERIFICATION

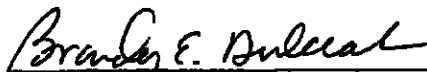
STATE OF IOWA)
)
CITY OF MUSCATINE)

I, Brad Spratt, verify under penalty of perjury that I have read the foregoing Verified Statement of Brad Spratt, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

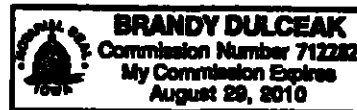


Brad Spratt

Sworn to and subscribed
before me this day of March 4, 2008

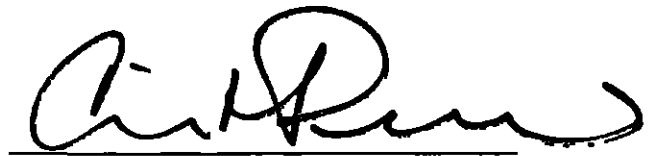


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that I have served on this 4th day of March, 2008, a copy of the foregoing "Comments and Requests for Conditions of Muscatine Power and Water" by first-class mail on all parties of record in this proceeding.

A handwritten signature in black ink, appearing to read 'Aimee L. DePew', written over a horizontal line.

Aimee L. DePew